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**U.S. Citizenship
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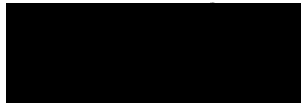
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FILE: LIN 03 251 50658 Office: NEBRASKA SERVICE CENTER Date: JUL 22 2005

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or as a member of the professions holding an advanced degree (the petitioner does not specify which classification he seeks). The petitioner describes himself as a youth pastor in a Baptist church. The petitioner states that he seeks to work as a "Religious Worker-Peacemaker." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree.

On appeal, the petitioner asserts that he will submit a brief and/or evidence within 30 days. To date, roughly nine months later, the record contains no further submission from the petitioner, and therefore we shall render our decision based on the record as it now stands.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

To qualify for the immigrant classification he seeks, the petitioner must show that he is an alien of exceptional ability in the sciences, arts, or business, or a member of the professions holding an advanced degree. Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(k)(2) define the terms:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The petitioner is an associate pastor at the First Baptist Church of Winthrop Harbor. The director determined that the petitioner is not employed in the sciences, arts, or business, and therefore the petitioner cannot qualify as an alien of exceptional ability in the sciences, arts, or business. On appeal, the petitioner does not contest this finding or otherwise attempt to demonstrate that his work falls under the heading of sciences, arts, or business.

With regard to the classification of member of the professions holding an advanced degree, the director cited *Matter of Wu*, 11 I&N Dec. 697 (Dist. Dir. 1966), which held that “a person who has been graduated with a bachelor of divinity degree from an accredited school of divinity is a member of the professions.” The director distinguished the matter at hand, however, on two grounds. First, the director observed that the petitioner’s position does not require an advanced degree. The director stated: “If the job does not require a professional holding an advanced degree, it does not qualify for visa classification under Section 203(b)(2). See Title 8, Code of Federal Regulations, Part 204.5(k)(4)(i).” This argument by the director fails because 8 C.F.R. § 204.5(k)(4)(i) applies only to petitions including an approved labor certification, or certain other factors such as Schedule A designation. The cited regulation states, in pertinent part: “The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent.” If the petitioner seeks a waiver of the job offer requirement, then there is no individual labor certification, Schedule A application, or Pilot Program application, and therefore 8 C.F.R. § 204.5(k)(4)(i) does not apply in instances involving national interest waiver requests. When a waiver is requested, the petitioner must only demonstrate that the alien seeks to work in a professional occupation. The alien must, obviously, hold an advanced degree (or its defined equivalent), but the petitioner need not demonstrate that the position *requires* an advanced degree.

The director’s second basis for distinguishing the present proceeding from *Matter of Wu* is more persuasive. The record contains no evidence that the petitioner holds a baccalaureate degree. The petitioner indicates that he studied philosophy for two years at Kazakh State University, but then left the university at the age of 20 and received no degree. The record lacks the required official academic record to document even this incomplete program. Since that time, the petitioner claims to have studied at various Bible institutes, but there is no evidence that the petitioner has ever completed a degree program at any academic institution.

As the director has observed, because the petitioner does not hold a baccalaureate degree, he does not meet the regulatory definition of “advanced degree” and, thus, cannot qualify as a member of the professions holding an advanced degree or its defined equivalent.

On appeal, the petitioner states:

The immigrant visa category under which I filed my petition is given to “qualified immigrants who ... will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States.”

I have started a mass-media campaign to pray for and encourage the creation of new jobs in the United States.

I believe that during oral argument I can present some solid evidence that my efforts, when joined with efforts of other people, can substantially benefit the national economy.

The petitioner, in quoting from the statute, has omitted a key part of the sentence. Section 203(b)(2)(A) of the Act refers to “qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States.” Because the petitioner has not shown that he qualifies as a member of the professions holding an advanced degree, or as an alien of exceptional ability, he has not established eligibility for the classification sought. The petitioner cannot remedy this deficiency simply by quoting sentence fragments from the statute while omitting references to requirements he has not met.

With regard to the petitioner’s request for oral argument, the regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner has identified no unique factors or issues of law to be resolved. In fact, the petitioner has set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The petitioner does not qualify for classification as an alien of exceptional ability in the sciences, arts, or business, or as a member of the professions holding an advanced degree. Because the petitioner has not established eligibility for the underlying immigrant classification, any discussion of the national interest waiver is moot because the waiver is available only to aliens who qualify for classification under section 203(b)(2) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.